

**The Secretary  
Telangana State Electricity Regulatory Commission  
11-4-660, 5<sup>th</sup> floor  
Singareni Bhavan, Red Hills  
Hyderabad - 500 004**

**June 22, 2021**

**Respected Sir,**

**Sub : Submissions in O.P.No.10 of 2016 relating to PPA between NTPC and TS Discoms for supply of power from Telangana Super Thermal Power Project phase I (2x800 MW)**

**With reference to public notice dated 15.6.2021, I am submitting the following points in the subject issue for the consideration of the Hon'ble Commission:**

- 1. In its interim order dated 30.7.2016, the Hon'ble Commission, positively responding to our submissions for amending the subject PPA, directed the TS Discoms to negotiate with NTPC to amend the PPA in respect of issues specifically identified in the provisions of the PPA to the effect that "the amended clauses shall meet the views expressed by the Commission and to file the draft agreement by incorporating the amendments, as directed for according consent/approval to the PPA, after hearing all the persons and stakeholders." However, the supplementary PPA with only one marginal amendment signed by NTPC and the TS Discoms, without incorporating all the amendments as per the interim order of the Commission, the subject issue is coming up for public hearing before the Hon'ble Commission after a gap of nearly five years. Since the supplementary PPA was signed between the parties on 9.4.2021, it is obvious that the direction of the Hon'ble Commission is defied by the parties to the PPA in terms of such inordinate delay, apart from their failure to incorporate the amendments as directed in the interim order of the Commission. For agreeing to just one marginal amendment and signing and submitting the supplementary PPA, a period of about five years is not required. Then, what are the reasons for such inordinate delay? Is it that NTPC deliberately dilly-dallied without coming to an understanding with TS Discoms on the directions given by the Hon'ble Commission in its interim order till the then Chairman and Members retire and new Chairman and Members are appointed to it? Or, is it with a view to delaying filing of an application for tariff determination, along with PPA approved by the Hon'ble Commission, before CERC? Needless to say, an early filing of such a petition and determination of tariff by CERC would make subsequent claims of NTPC for increase in capital cost of the subject project and impermissible delay in execution as per the then applicable regulations questionable. Terms and conditions in the PPA are invariably interlinked with the process of determining permissible capital cost and tariff. In other words, even for determination of tariff, CERC has to take into account the applicability of terms and conditions in the PPA as approved by the Hon'ble Commission. The Hon'ble Commission, in its interim order, stated that "we are in agreement with the statement of the DISCOM (the CERC will decide the tariff on ad hoc basis or regular basis). The CERC may decide ad hoc tariff in the event it is unable to decide**

regular tariff due to any unavoidable delay.” Did the parties to the PPA approach CERC for determination of tariff for stage I of TSTPP and obtain its order?

2. In response to the assertion of the Hon’ble Commission in the interim order that, it may be appropriate to state that the tariff has to be determined by the CERC under Section 79 (1) (a) of the Electricity Act, 2003, but TSERC is vested with powers under Section 86 (1) (b) of the Electricity Act, 2003 to regulate the PPA which covers price and terms of the PPA entered by the TS Discoms for supplying the power procured from the project within the State of Telangana, the TS Discoms, in line with the argument of NTPC and legal opinion obtained by them, prayed the Hon’ble Commission to accept the jurisdiction of CERC on tariff determination of the subject project. I request the Hon’ble Commission to re-examine the issue on the following grounds, among others:

- a) The view of the Hon’ble Commission that “it may be appropriate” to express its said opinion on the jurisdiction of CERC to determine tariff for the subject plant is not a reasoned opinion.
- b) Is there any judgement by APTEL or the Supreme Court upholding the view that, if generating capacity of a central generating station is allocated to only one State, then tariff has to be determined by CERC and PPA has to be approved by the ERC of the State concerned?
- c) The Hon’ble Supreme Court, in its order dated 11.4.2017 in Civil Appeal Nos.5399-5400 of 2016 and other petitions, held that “This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission’s jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State”. From the order it is clear that PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission, but the State Commission’s jurisdiction is only where generation and supply takes place within the State. In the subject case, since generation and supply take place in the State of Telangana only, not more than in one State, generation, apart from supply, being basis for determining the jurisdiction of the State Commission, and determination of tariff being interlinked with PPA, it would be proper to interpret that determination of tariff also falls within the jurisdiction of the State Commission.

- d) The very basis on which PPA of the subject plant is submitted for the consideration of the Hon'ble Commission which gave its interim order five years back should be the basis for submitting a petition for determination of capital cost and tariff by the Hon'ble Commission itself.**
- e) Even though TSTPP is a central generating station, when its capacity is allocated to the State of Telangana exclusively and the project is being set up in the State, it becomes State-specific and does not assume the nature of a multi-State project.**
- f) Section 79(1)(b) of the Electricity Act, 2003 says that CERC shall discharge the function "to regulate the tariff of generating companies owned or controlled by the Central Government," among others. Section 86(1)(b) says that SERC shall discharge the function to "regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State," among others. If a CGS is set up in a State exclusively for that State, Section 79(1)(b) of the Act cannot bar the SERC from discharging its functions under Section 86(1)(b). The interpretation that CERC has to determine tariff of such a project, if accepted, the powers of SERC under Section 86(1)(b) get nullified or become a mechanical formality. Without determining permissible capital cost and tariff of such a project, how can SERC regulate the price at which electricity shall be procured from the generating companies, etc.? In other words, if CERC determines tariff of such a project, can SERC independently determine the price at which electricity shall be procured by the Discoms?**
- g) Singareni Collieries Company Limited, in which both the Central and State Governments have shares, is governed by the policies of the Ministry of Coal, Government of India. All issues, including permissible capital cost, generation tariff, etc., pertaining to procurement of power from its project by TS Discoms came up for consideration and determination of Hon'ble TSERC vide its order dated 6.12.2016 in IA No.14 of 2016 in OP No.9 of 2016 and order dated 19.6.2017 in OP No.9 of 2016.**
- h) Does any applicable Act say that, as in the subject case, for determination of tariff CERC has to take into consideration PPA approved by SERC and for determination of price at which the Discoms have to procure electricity from such a project SERC has to take into consideration the tariff determined by CERC?**
- i) In the additional submissions, the TS Discoms have informed that the legal opinion obtained by them also endorsed that tariff determination for TSTPP be done by CERC only. Though the Discoms have stated that the said legal opinion was filed before the Hon'ble Commission, copy of the same is not found attached with the additional responses of the Discoms. In their submissions dated 18.4.2021, the Discoms have stated that in the hearing held on 9.11.2020, the**

Hon'ble Commission accepted the jurisdiction of CERC in respect of tariff determination for NTPC's TSTPP-1 project. The said hearing is no public hearing, in the daily orders no such opinion of the Hon'ble Commission is recorded and no formal order to that effect, if given by the Hon'ble Commission, is available in the public domain. Therefore, we request the Hon'ble Commission to make a copy of the said legal opinion available to us to study the grounds on which such legal opinion is given and make further submissions.

- j) In the case of stage I of Simhadri project of NTPC set up in Visakhapatnam whose 100% capacity was allocated to Andhra Pradesh, that issue did not come up before APERC for determination of permissible capital cost, generating tariff and approval of PPA. In the subject case, TS Discoms and NTPC came before the Hon'ble Commission for consideration of PPA. Keeping this qualitative difference, I request the Hon'ble Commission to assert its authority and direct TS Discoms and NTPC to file their submissions for determination of capital cost and tariff also in the subject case in order to exercise its powers to regulate the price at which the TS Discoms shall procure electricity from the subject project and give a combined order on all the issues. For a harmonious and cohesive determination of all issues concerned in cases like the subject one, without conflict of jurisdiction, such an approach is imperative. Let it be a test case, if challenged, for determination of finality of jurisdiction of SERC and CERC in such cases at the appropriate level.
3. In the interim order, the Hon'ble Commission directed the TS Discoms to amend the relevant clauses for allocation of 100% capacity of the subject project (4000 MW), as it is exclusively allocated to Telangana State under A.P. Reorganisation Act, 2014. The stand of NTPC on allocation of 85% capacity only to the State of Telangana by the Government of India, and various submissions of the Discoms are untenable for the following reasons, among others:
- a) The prayer of the TS Discoms to the Hon'ble Commission to grant exemption from amending the PPA as directed in the interim order on this issue is contrary to the stand taken by the Government of Telangana in its correspondence dated 10.3.2016 with the Central Electricity Authority for allocation of 100% capacity of the project to the State of Telangana.
- b) Since the subject project is allocated to the State of Telangana exclusively under A.P. Reorganisation Act, 2014, the guidelines for allocation of capacity of central generating stations to different states and retaining 15% capacity for GoI to allocate to States based on their requisition, subject to certain conditions, "based on the prevailing power allocation guidelines" do not apply to the subject project.
- c) That 100% capacity of stage I of Simhadri power project of NTPC was allocated to Andhra Pradesh as a special case (land for the project was allocated by GoAP) further justifies the stand for allocation of 100% capacity of the subject

project to the State of Telangana as a special case under A.P. Reorganisation Act, 2014.

- d) **The very fact that the State of Telangana is the sole beneficiary, having allocation of 85% in the capacity of the subject project, with no other State having allocation of a share from it, shows qualitative difference between allocation in this case and allocation of shares in a CGS to different States under power allocation guidelines of MoP, GoI. Such a qualitative difference further justifies 100% allocation of the capacity of the subject project to the State of Telangana. In other words, “prevailing power allocation guidelines” of the GoI were not applied while allocating 85% capacity of the subject project, without any share to other States in the southern region. Similarly, the said guidelines need not be applied for allocation of 15% balance capacity to other States on requisition and the same has to be allocated exclusively to the State of Telangana.**
- e) **The presumptuous contention of TS Discoms that, if other States seek to draw the balance 15% capacity of unallocated power, then they have to necessarily incur additional transmission charges in addition to PoC charges payable to PGCIL, which is generally not preferred by those States, implies that generally the unallocated 15% capacity remains with the CGS concerned without being sought by, and supplied to, any State. If that is the ground reality, there is no need and justification for retaining 15% capacity with the CGS concerned, in the present case TSTPP, to be allocated to a State/States at the discretion of the GoI. And, there is no justification in the GoI not taking a favourable decision in this regard, despite the requests made by the Government of Telangana.**
- f) **The specific condition in CERC generating tariff regulations, 2019, quoted by the Discoms, that “in the absence of any specific allocation of unallocated power by the Central Government, the unallocated power shall be added to the allocated shares in the same proportion as the allocated shares,” obviously, of the States concerned, implies that, if only no State seeks allocation from the unallocated 15% capacity of a CGS, then that capacity shall be added to the States concerned in proportion to the shares allocated to them in 85% capacity. Conversely, if GoI allocates 15% unallocated capacity of a CGS to any other State/States, then the addition of that capacity to the States in proportion to the shares allocated to them in 85% capacity simply does not arise. Therefore, the contention of TS Discoms that the CERC tariff regulations, 2019, have facilitated the 100% capacity allocation from the NTPC Telangana STPP phase I to TS Discoms does not hold water. Is there any such precedent in the case of any CGS? If such a precedent is there, the same would further strengthen and justify the demand for allocation of the balance 15% capacity to the State of Telangana in the subject issue. That is the reason why the State Government has been pursuing with the MoP, GoI, for 100% firm allocation of the capacity in NTPC TSTPP phase I, so as to avoid any ambiguity in future, as submitted by the Discoms, and attain finality of 100% firm allocation.**

- g) That the Government of Telangana has been constrained to pursue with MoP, GoI, for 100% firm allocation of TSTPP phase I to TS Discoms, even after a period of five years and after letter dated 25.2.2019 of MoP, GoI, conveying allocation of only 85% of capacity of the said project to TS Discoms and retaining the balance 15% at the disposal of GoI confirms that uncertainty and ambiguity on allocating or adding the balance 15% unallocated power to TS Discoms continues.
- h) Therefore, we request the Hon'ble Commission to direct the authorities concerned to allocate 100% capacity of the subject project to the State of Telangana in true letter and spirit of A.P. Reorganisation Act, 2014. Needless to say, "power allocation guidelines" of GoI cannot override an Act passed by the Parliament. The very principle adopted for allocating 85% capacity in the subject project to TS Discoms should be applied for allocation of the balance 15% to the latter.
4. In the interim order, the Hon'ble Commission asserted that regarding non-operation of the plant exclusively on account of failure of NTPC other than force majeure conditions, there shall be a penalty clause for the non-operating period of the plant, to have equitable liability on both sides. The submissions of NTPC and TS Discoms that no such penalty clause is required is untenable. The sum and substance of their contentions is that, if NTPC fails to generate and supply power from the subject project to TS Discoms, fully or less than plant availability factor, proportionate reduction of capacity charges (fixed charges) itself is a penalty and therefore, no need to amend the said clause as directed by the Hon'ble Commission. If the Discoms fail to take power from the project as per declared plant availability factor, they have to pay fixed charges to NTPC to the extent of capacity backed down. Similarly, if NTPC fails to generate and supply power as per PAF, it has to pay penalty to the Discoms to have equitable liability on both sides, as the Hon'ble Commission asserted rightly in the interim order. Reduction of fixed charges proportionate to lesser generation and supply of power by the subject project is not a benefit to the Discoms, for, they are paying fixed charges proportionate to power generated and supplied by the project. In other words, they are not paying fixed charges for power not generated and supplied to them. In the case of backing down, the Discoms are paying fixed charges proportionate to power not generated and supplied as per backing down orders of SLDC, i.e., the Discoms are paying penalty in the form of fixed charges for power not generated and supplied for which the failure of the Discoms to take that power is responsible. When NTPC fails to generate and supply power from the subject project to TS Discoms, it should also pay penalty to the Discoms proportionate to power not generated and supplied for its failure to generate and supply that power. It is because of the failure of NTPC to generate and supply power or supply power lesser than PAF, the Discoms will be constrained to purchase power from other sources and in the process may incur additional expenditure and/or face other problems. In order to compensate the Discoms for the additional burden caused to them due to the failure of NTPC, the latter has to pay penalty to the Discoms. That is the sound reasoning behind the

direction given by the Hon'ble Commission. That there is no such provision in the regulations of CERC and TSERC is no valid ground for not including by way of an amendment to the PPA a clause imposing penalty on NTPC in the said eventuality. It shows how imbalanced the said regulations are. The said regulations do not categorically and specifically say that no such provision for imposing penalty on the developers, here NTPC, for their failure to generate and supply power, fully or partly vis a vis PAF, to the buyer Discoms under PPA be incorporated in PPA. The Hon'ble Commission has discretionary powers to deviate from the regulations by recording the reasons for the same in writing, to ensure equitable liability on both sides. Therefore, I request the Hon'ble Commission to get the amendment to the PPA brought about as directed in its interim order.

5. In the interim order, the Hon'ble Commission directed the Discoms to pursue with CIL, MOP and Ministry of Coal, GoI, through the State Government for allocation of linkage of coal from Singareni Collieries Company Limited, instead of Odisha State mines for NTPC's TSTPP, in view of mines of SCCL being in the vicinity to TSTPP and that would reduce the burden of transportation charges and resultant tariff to be paid by the consumers. Since SCCL has adequate deposits of coal to supply to TSTPP and expressed its willingness to do so, there should not be any objection to it from any quarters. Such an arrangement should not be confined to just tapering linkage, but extended to regular long-term linkage of coal, in all fairness. While the said direction was given by the Hon'ble Commission in the year 2016, going by the correspondence the Government of Telangana had with the GoI copies of are submitted by the TS Discoms along with their additional responses in the subject case, it is obvious that there has been inordinate delay in taking up the issue with the GoI. Special Chief Secretary of Government of Telangana has written a letter dated 10.3.2020 to the Secretary, MoP, GoI. Another letter dated 21.7.2020 was sent to the Secretary, Ministry of Coal, GoI. Another letter dated 10.11.2020 was sent to the CMD of NTPC. In other words, Government of Telangana did not take any initiative to take up the issue with the concerned authorities in the GoI for almost four years. It is difficult to understand as to why GoI has been dragging on this issue, as well as allotment of 100% capacity of TSTPP to TS Discoms, even after the Government of Telangana requested for the same. To take a decision on these issues, it does not require more than one year. We expect the Government of Telangana to consistently pursue with GoI for its favourable decisions on these issues without further delay.
6. The Hon'ble Commission, in its interim order, asserted that the clause on termination of the PPA by NTPC was not equitable and directed to modify the clause 12.4 to provide for the other party, i.e., the TS Discoms, to issue notice for termination. The submissions of NTPC and TS Discoms that the issue of termination of PPA under clause 12 arises only when TS Discoms are re-organised and assigned to private organisation/successors, and if the latter do not fulfil the pre-requisites on payment security mechanism. If such is the case, the same should be made clear categorically in the PPA, besides incorporating a clause that no party to the PPA, i.e., NTPC or TS Discoms, can terminate the PPA unilaterally as long as

**TS Discoms continue as they are, i.e., as the companies of the Government of Telangana. I request the Hon'ble Commission to get amendments brought about in the subject PPA accordingly. It is a standard practice that, when a corporate entity is transferred to another entity, both liabilities and obligations and assets and rights of the former also would stand transferred to the successor entity.**

- 7. Regarding buy-out, regulations of CERC or TSERC do not provide for the same is no reason for not incorporating a clause providing for buy-out of the project after completion of the term of PPA. No regulation categorically says that such a clause should not be incorporated in PPA. Even while agreeing with the submission of the Discoms, the Hon'ble Commission, in its interim order, desired that endeavour should be made by TS Discoms to provide for buy-out clause, as the NTPC project is being established exclusively for Telangana State. Needless to say, Discoms have been paying fixed charges during the period of PPA which cover about 90% of the capital cost of the plant, return on equity and interest on debt fully. Moreover, the project is being set up in Telangana and exclusively for the State as per the Act passed by the Parliament. Such is not the case with other CGSs. By providing for buy-out clause in the PPA, NTPC will get terminal value of the project and would not incur any loss. Therefore, I request the Hon'ble Commission to direct both the parties to the PPA to incorporate buy-out clause with appropriate terms and conditions. Legality of regulations is one thing and propriety of the sections/clauses therein is quite another. If any section/clause in any regulation or any deficiency therein is irrational and imbalanced and detrimental to larger consumer interest, the same needs to be amended. That is the reason why in every regulation a saving clause is incorporated to the effect that the Commission concerned can deviate from the regulations by recording the reasons therefor in writing. After all, all future eventualities cannot be foreseen in advance.**
  
- 8. What is the stage of execution of the subject project (stage I) and when COD is declared or to be declared need to be examined. If there is impermissible delay in execution of the project, as per terms and conditions in the PPA or regulations in force during that period of execution, impermissible additional capital expenditure and IDC during the period of impermissible delay need to be examined and rejected and liquidated damages be collected from NTPC for the impermissible delay and failure to generate and supply power to the Discoms during the period of delay. Whether there have been any orders from the National Green Tribunal imposing restrictions on NTPC for not fulfilling legally binding obligations for controlling emissions from the subject plant at required level, and if so, whether the failure of NTPC to fulfil the same in time led to avoidable delay in execution of the project and escalation in cost need to be examined. The TS Discoms have to agitate their legitimate concerns before CERC, if a petition for determination of tariff comes up for hearing. I request the Hon'ble Commission, if it sticks to the stand that CERC has to decide tariff for the subject plant, to direct the TS Discoms to agitate their concerns before CERC to protect larger consumer interest in an effective manner.**

9. What is the position relating to the balance 2400 MW out of 4000 MW capacity of the subject project to be set up in Telangana by NTPC under A.P. Reorganisation Act, 2014? Is any time schedule decided with mutual agreement between the Discoms and NTPC for execution of the remaining units to be in tune with requirement of power by the Discoms as per growing demand periodically to fulfil the obligations under the said Reorganisation Act? Have they entered into any PPA for supply of power from the remaining units of TSTPP to the Discoms? In the interim order, the Hon'ble Commission held that "the establishment of the plant in the Telangana state is necessary" for various reasons given therein (point No.37).
10. The Hon'ble Commission, while giving directions to amend the subject PPA as directed in its interim order, had shown professional integrity, intellectual honesty and moral courage to protect larger consumer interest, without affecting the legitimate interests of either NTPC or TS Discoms.
11. I request the Hon'ble Commission to provide me an opportunity to make further submissions in person during the public hearings on the subject issue and after receiving and studying the responses of the Discoms and NTPC, if it also gives its responses, to my submissions.

Thanking you,

Yours sincerely,

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